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6 Creditor & Interested Party

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, NORTHERN DIVISION

10  
11 In Re: } CASE NO. 9:22-bk-10383-RC  
12 Linda M. Ramirez } Chapter 13

13  
14 Debtor.  
15  
16  
17  
18 RAUL C. RAMIREZ'S MOTION TO  
DISMISS DEBTOR'S CHAPTER 13  
CASE WITH PREJUDICE AND/OR  
CONVERT TO CHAPTER 7, OR IN THE  
ALTERNATIVE MOTION FOR  
DETERMINATION OF SECURED  
CREDITOR'S STATUS; MEMORANDUM  
OF POINTS AND AUTHORITIES,  
DECLARATION OF RAUL C. RAMIREZ  
IN SUPPORT THEREOF, AND  
REQUEST FOR JUDICIAL NOTICE

23       **COMES NOW**, party in interest and creditor, Raul C. Ramirez, hereinafter  
24 referred to as "Raul" and moves the court to convert this Chapter 13 case to a case  
25 under Chapter 7, or dismiss this Chapter 13 case, for cause, with prejudice, pursuant  
26 to 11 U.S.C. § 1307(c) and 11 U.S.C. § 349(a), or in the alternative, determine Raul is  
27 a secured creditor in the Chapter 13 case.  
28

## I. INTRODUCTION

**A. Debtor's Bad Faith is Grounds for Conversion or Dismissal of this Case.**

As required by 11 U.S.C. § 1325(a)(3), Debtor's Chapter 13 Plan must be proposed in good faith. Pursuant to 11 U.S.C. § 1325(a)(7) Debtor's Chapter 13 Petition must have been filed in good faith.

Both Debtor's Petition and Plan have been filed in Bad Faith and therefore, this Chapter 13 case should be dismissed for cause or converted to Chapter 7.

**II.**  
**STATEMENT OF THE FACTS**

Raul and Debtor married on August 6, 2011 and separated on or about July 2, 2017. However, prior to the marriage they lived together as husband and wife, on and off, for about 15 years over a 30-year period. Raul raised debtor's oldest son from her prior marriage and the two of them had two children of their own. All three children are now adults.

On April 17, 2002, while Debtor and Raul were not married, Debtor purchased the real property commonly known as 2213 Miramar Walk, Oxnard, CA 93035 and hereinafter referred to as "the property" in her name only. The purchase price was \$170,000 and the purchase mortgage was \$159,600.

On July 6, 2017, Debtor filed a legal separation action against Raul, in Ventura County Superior Court under Case #D382866. Raul was served with process on the case on July 16, 2017 and filed his response on November 6, 2017.

1 After protracted and acrimonious litigation in the Family Law Court, the case  
2 finally went to trial in Ventura County Superior Court on February 25, 2022, before  
3 Honorable Judge Michael L. Lief.  
4

5 Evidence of how protracted this divorce litigation was, is Debtor's Schedule F  
6 filed in this Chapter 13 case, wherein Debtor states she owes her divorce attorney,  
7 \$152,301, for representing Debtor in the Dissolution of Marriage case against Raul.  
8

9 At the trial on February 25, 2022, the Ventura County Family Law Court found  
10 Debtor owned the real property prior to the marriage and further found Debtor owed  
11 Raul \$91,772 for various reimbursements relating primarily to the property.  
12

13 On February 25, 2022, the Ventura County Family Law Court was prepared to  
14 order the property sold so the \$91,772 could be paid to Raul out of escrow. Debtor,  
15 through her family law counsel, however, requested a 90-day extension to refinance  
16 her home and raise the money to pay Raul the \$91,772. Raul, through his attorney,  
17 agreed to the 90-day extension. The transcript of the hearing in the Family Law Court  
18 held on February 25, 2022, includes the following:  
19  
20

21 On page 24, lines 8 through 13, Laurie Peters, the attorney for Raul, states,  
22  
23 “I would remind the court that in order to pay my client,  
Mrs. Ramirez is probably going to have to sell the  
house.”

24 On page 59, lines 7 through 12, the Family Law Judge states,  
25  
26 “Very Good. And then the parties agree as well that  
the wife shall have 90 days to refinance and buy-out  
husband. And if it does not occur within 90-days,  
then the parties agree the house will be listed for sale  
and the parties will be ordered to cooperate to  
effectuate the sale.”  
27  
28

1 On line 17, page 59, Ms. Hartley, the Debtor's Dissolution of Marriage lawyer,  
2 states:

3 "Yes, your Honor."

4 On page 63, the court states,

5 "Well, 90 days from today is May 26<sup>th</sup>. Absent any  
6 showing that it couldn't be done by May 26<sup>th</sup>, I think  
7 that 90 days from today is appropriate. If there's a  
8 problem with a lender, certainly the parties can talk to  
9 each other and not come back to court, because  
nobody wants to spend more money in this case.

10 And given that the parties have settled all the issues,  
11 it seems to the court if there's documentary notice  
12 from a lender that we need we need it ...I need it...it  
13 seems reasonable to the court that if a lender in the  
14 midst of refi could do something that said we need to  
actually see a judgment before we can do this,  
Respondent ought to cooperate with that."

15 As can be seen by the above exchange, Debtor, through her Family Law  
16 Counsel, represented to the Family Law Judge, that Debtor needed 90 days from  
17 February 25, 2022, to refinance her mortgage in order to pay Raul the \$91,772.

18 The Court granted the 90-day request and ordered that if the \$91,772 was not  
19 paid within 90-days of February 25, 2022, the order to sell the property would go into  
20 effect on May 26, 2022, and the parties were further ordered to cooperate to  
21 effectuate the sale of the property.

22 During this 90-day period between February 25, 2022, and May 26, 2022,  
23 instead of refinancing her mortgage, to raise the \$91,772, Debtor stopped making her  
24 monthly mortgage payments on her 1<sup>st</sup> and 2<sup>nd</sup> mortgages, went to work for her  
25 divorce attorney's husband as a "Prayer Clerk," and filed Chapter 13 on May 25,  
26 2022, one day before the property sale order was to go into effect.

1 There can be no doubt Debtor filed this Chapter 13 case solely to discharge  
2 her non-DSO obligation to Raul.

3  
4 **III.**  
**MEMORANDUM OF POINTS & AUTHORITIES**

5 **B. Raul is a Party-in-Interest and has standing to bring this Motion.**

6 Raul is listed in Debtor's bankruptcy schedules as an unsecured creditor  
7 holding an undisputed claim in the amount of \$91,772 for a marital off-set payment  
8 due and payable per the February 25, 2022, court order.

9  
10 11 U.S.C. § 1307(c) provides in part

11 "On request of a party in interest or the United States  
12 trustee and after notice and a hearing, the court may  
13 convert a case under this chapter to a case under  
14 Chapter 7 of this title, or may dismiss a case under  
this chapter, whichever is in the best interests of  
creditors and the estate..."

15  
16 **C. The Court has Power to Dismiss this Chapter 13 Case for Cause and with  
prejudice.**

17 The power to dismiss this Chapter 13 case for cause and/or with prejudice is  
18 implied in 11 U.S.C. § 349(a), which provides in part:

19  
20 "Unless the court, for cause, orders otherwise, the  
21 Dismissal of a case under this title does not bar the  
22 Discharge, in a later case under this title, of debts  
that were dischargeable in the case dismissed...."

23 11 U.S.C. § 105(a) provides:

24  
25 "The court may issue any order, process, or judgment  
26 That is necessary or appropriate to carry out the  
provisions of this title. No provision of this title  
27 providing for the raising of an issue by a party in  
interest shall be construed to preclude the court from,  
sua sponte, taking any action or making any  
determination necessary or appropriate to enforce or

implement court orders or rules, or to prevent an abuse of process.”

**D. The Court should dismiss this Chapter 13 case with prejudice  
Because this Debtor did not file her Petition in this case in good faith.**

11 U.S.C. § 1325(c)(7) provides in part:

“Except as provided in subsection (b), the court shall Confirm a plan if (7) the action of the debtor in filing the petition was in good faith. “

In this case, the only reason the Debtor filed a Chapter 13 instead of a Chapter 7 was to discharge the non-DSO claim owed to Raul. From the Debtor's Schedules, it can be seen that she filed Chapter 7 on March 19, 2014, under Case #9:14-bk-10543-DS. Debtor received a discharge on this case on July 7, 2014. Debtor was eligible to file a Chapter 7 eight years after her previous filing or on or about March 19, 2022. By doing so, she could have discharged all of her unsecured debt of \$162,000. As can be seen from Debtor's Schedules, Debtor easily could have passed the Chapter 7 Means Test. Debtor purposefully stopped paying her mortgages for 3-months, so to create a mortgage arrearage, for her Chapter 13 Plan. The obvious conclusion is that Debtor filed this Chapter 13 case solely to avoid the Family Law State Court Litigation and the resulting judgment in favor of Raul from the Ventura County Superior Court.

E. The Court should dismiss this Chapter 13 Case with Prejudice because Debtor did not file her Plan in this case in Good Faith

11 U.S.C. § 1325(a)(3) provides in part:

“Except as provided in subsection (b), the court shall confirm a plan if the plan has been proposed in good faith and not by any means forbidden by law;”

1  
2 Debtor's proposed Chapter 13 Plan provides for a 2% payment to general  
3 unsecured creditors over a 36-month period. This amounts to a payment on Raul's  
4 \$91,722 claim of approximately \$1,800.  
5

6 As previously mentioned, Debtor purposely stopped paying her mortgage in  
7 order to create a mortgage arrearage for her chapter 13 Plan. She now works for her  
8 divorce attorney as a Prayer Clerk, in order to establish herself as a Chapter 13 "wage  
9 earner".  
10

11 Debtor misled the Family Law Court, so to file the Chapter 13 case before the  
12 Family Law Court entered its order directing the property be sold. Her Chapter 13  
13 case was filed one day prior to the date the Family Law Court 's order to sell the  
14 property was to go into effect, on May 26, 2022.  
15

16 The Bankruptcy Court has identified the governing 11 U.S.C. § 349(a) standard  
17 as to bad faith, as "the totality of circumstances". Under the law of the 9<sup>th</sup> Circuit as  
18 established in *Leavitt v Soto (in re Leavitt)* 171 F.3d 1219,1224, (9<sup>th</sup> Cir. 1999), *aff'g*  
19 209 B.R. 935 (9<sup>th</sup> Cir. BAP 1997). The four objective *Leavitt* factors are:  
20

- 21 1. Whether the Debtor misrepresented facts in  
22 her petition or plan, has unfairly manipulated  
23 the bankruptcy code, or filed a Chapter 13  
Petition and Plan in an inequitable manner;
- 24 2. The Debtor's history of bankruptcy filings and  
dismissals;
- 25 3. Whether Debtor's only intent in filing the  
Chapter 13 case was to defeat State Court  
Litigation and/or Judgment.  
26  
27  
28

1                   4. Whether Debtor has engaged in egregious  
2                   behavior.

3                   Consideration of the totality of circumstances means that these four  
4                   circumstances are not essential elements that need to be computed with arithmetic  
5                   precision. For instance, a bankruptcy could be found to be filed in 349(a) "bad faith"  
6                   even though the debtor had no prior bankruptcy cases.

8                   Nor is malice or fraudulent intent required. But the presence of fraud, malice,  
9                   or breach of fiduciary duty can be probative of egregious behavior. *Leavitt*, 171 F.3d,  
10                  1224-1225.

12                  The Virginia Bankruptcy Court decision, *In Re Green*, 2010 WL 396253, sets  
13                  out a non-exclusive list of factors to establish bad faith. 1) percentage of payment to  
14                  unsecured creditors; 2) Debtor's financial situation; 3) The period /time of payments  
15                  and length of plan; 4) Debtor's employment situation; 5) whether the Chapter 13 is  
16                  being used to discharge a debt that cannot be discharged in Chapter 7.

18                  In this case, the Debtor's percentage of payments to unsecured creditors is  
19                  2%. Debtor's financial situation is that prior to going to work for her divorce lawyer,  
20                  she was, and continues to be, on disability. The Debtor's Chapter 13 Plan is 36-  
21                  Months; Debtor has no realistic or reliable employment history; and finally, the  
22                  Chapter 13 is being used to discharge a debt that cannot be discharged in Chapter 7.

24                  "11 U.S.C. § 523(a)(15) provides a discharge under  
25                  § 727, 1141, 1228(a), 1228(b), or 1328(b) of this  
26                  title does not discharge an individual Debtor from  
27                  any debt (15) to a spouse, to a former spouse or  
28                  child of the Debtor and not of the kind described in  
                        paragraph 5 that is incurred by the Debtor in the  
                        course of a divorce or separation, or in connection

1 with a separation agreement, divorce decree or  
2 other order of court of  
3 record...."

4 **F. Debtor's Request for the 90-day Extension on the Property's Sale Order**  
5 **was a Forbearance Request made under False Pretenses Per 11 U.S.C. §**  
6 **523(a)(2)(A) and her Chapter 13 Case was Filed in an Unequitable Manner.**

7 Debtor's Forbearance Request for 90-days from February 25, 2022, on the  
8 entry of the property sale order was made under false pretenses. Debtor represented  
9 to the Family Law Court she needed 90 days to refinance her mortgages to obtain the  
10 \$91,772 so to pay Raul. Based on this representation, Raul stipulated to the 90-day  
11 extension on the sale order. In truth, Debtor had no means or ability to refinance her  
12 mortgages. Rather, the 90-days was used to let her mortgages go into arrears and to  
13 file her Chapter 13 Case one day before the property sale order was to go into effect.  
14 According to Debtor's Statement of Financial Affairs, she began making installment  
15 payments to a Chapter 13 bankruptcy attorney on April 6, 2022.  
16

17 The courts are divided as to whether forbearance alone constitutes an  
18 extension of credit, under § 523(a)(2)(A). The majority of courts have determined a  
19 payment forbearance is "an extension of credit" under § 523(a)(2) because a delay in  
20 demanding payment fits squarely within the technical definition of an "extension." See  
21 *In re Gerlach* 897 F.2d 1048 (10<sup>th</sup> Cir 1990) and (*In re Kim*), 163 B.R. 157, 161 (9th  
22 Cir. BAP 1994), aff'd, 62 F.3d 1511 (9<sup>th</sup> Cir. 1995).  
23

24  
25 **G. The Court Should Dismiss or Convert this Case because this Debtor's**  
26 **Chapter 13 Plan is not Feasible.**

27 11 U.S.C. § 1325(a)(6) states:  
28

1 "Except as provided in subsection (b), the Court shall  
2 confirm a plan if:

3 (6) the debtor will be able to make all payments  
4 under the plan and comply with the plan."

5 In this case, on February 13, 2020, Raul recorded a Notice of Lis Pendens, on the  
6 real property in conjunction with the pending Dissolution of Marriage Action. By doing  
7 so, Raul became a secured creditor on the subject real property. In the case of *In re*  
8 *Lane*, 980 F.2d 601 (9<sup>th</sup> Cir. 1992), the court held that,

9  
10 "Under California Law, the recording of a Lis  
11 Pendens constitutes a transfer within the meaning of  
12 U.S.C. § 547(e)(1)(a). Consequently, the  
13 creditor's interest in the Lane's property was not  
14 voidable as a preference transfer.

15 The court went on to state,

16 "Under California law, a party attains an interest  
17 superior to subsequent purchasers upon recordation  
18 of a lis pendens. It is the fact of attainment of a  
19 superior interest, not the creation of a lien or the  
20 rendering of a judgment, that creates a transfer  
21 under the Bankruptcy Code in both California and  
22 Arizona law.

23 Accordingly, we hold that the filing of a valid lis  
24 pendens is a transfer within the meaning of the  
25 Bankruptcy Code. Hurst's interest in the Lane's  
26 property relates back in time to the filing of the lis  
27 pendens and is therefore not avoidable as a  
28 preference."

29 In this case, Raul's Lis Pendens recorded February 13, 2020. The Dissolution  
30 of Marriage judgment was signed by the Court, on April 8, 2022, and entered in the  
31 Ventura County Superior Court on April 11, 2022. This bankruptcy case was filed May  
32 25, 2022. However, for preference purposes, the transfer occurred when the Lis  
33 Pendens was filed.

1 Pendens recorded on February 13, 2020, which was more than one year before this  
2 bankruptcy was filed on May 25, 2022. Therefore, Raul is a secured creditor.  
3

4 As a secured creditor, pursuant to 11 U.S.C. under § 1325(a)(5)(b), Debtor's  
5 Chapter 13 Plan has to provide for equal monthly periodic payments over the  
6 proposed 36-month Plan to pay in full the sum of \$91,772 owed to Raul. Whether a  
7 36-month or a 60-month Plan, Debtor has insufficient income to make the required  
8 monthly plan payments and therefore, Debtor's Chapter 13 Plan cannot be confirmed.  
9 Accordingly, this Chapter 13 case should be dismissed or converted to Chapter 7.  
10

11  
12 **IV.**  
13 **CONCLUSION**

14 In *Goeb vs Heid*, 675 F2d. 1386 (9<sup>th</sup> Cir. 1982), the Court considered the  
15 factors for determining Chapter 13 Good Faith. The Court held that,  
16

17  
18 "Given the nature of Bankruptcy Courts, and the  
19 absence of congressional intent to specifically define  
20 "good faith," the proper inquiry is whether the Goeb's  
21 acted equitably in proposing their Chapter 13 Plan.  
22 The court cited Securities Exchange Commission vs.  
23 United States Realty Improvement Company, 310 U.S.  
434, 60 S. Ct. 1044, 1053, "A bankruptcy court is a  
court of equity...and is guided by equitable doctrines  
and principles..."

24  
25 Equitable doctrines and principles don't condone a Debtor representing to the Family  
26 Law Court that she needs 90-days to refinance her mortgage, so to pay Raul, then  
27 she immediately stops paying her mortgages, so to create a mortgage arrearage for  
28

1 her Chapter 13 case and thereby eliminated her ability to refinance her mortgage.  
2 For all of the above reasons, the court is respectfully requested to dismiss this  
3 Chapter 13 case for cause or convert Debtor's Chapter 13 case to a case under  
4 Chapter 7, or in the alternative, determine Raul is a secured creditor.

DATED August 1, 2022

NELSON COMIS KETTLE & KINNEY, LLP

By

~~William E. Winfield, Attorney for Raul Ramirez  
Party in Interest and Secured Creditor~~

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**5811 Olivas Park Dr., Suite 202, Ventura, CA 93003**

A true and correct copy of the foregoing document entitled (specify): **Raul C. Ramirez's Motion to Dismiss Debtor's Chapter 13 Case With Prejudice and/or Convert to Chapter 7, or in the Alternative Motion for Determination of Secured Creditor Status; Memorandum of Points and Authorities; Declaration of Raul C. Ramirez in Support Thereof; and Request for Judicial Notice** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **August 2, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

**On behalf of Creditor, Wells Fargo Bank, N.A.: Sahm Lovan** sahm.lovan@wellsfargo.com, sahm.lovan@wellsfargo.com, **Chapter 13 Trustee: Elizabeth (SV) F Rojas (TR)** cacb\_ecf\_sv@ch13wla.com, **Counsel for Debtor: John K Rounds** jrounds@rslawllp.com, rsutter@rslawllp.com, admin@rslawllp.com, **On behalf of Creditor, UNIFY Financial Federal Credit Union: Brett P Ryan** ziggy.valerio@unifyfcu.com, bankruptcydepartment@unifyfcu.com, **Interested Party: Valerie Smith** claims@recoverycorp.com, **Interested Party: Richard L. Stevenson** bknotice@mccarthyholthus.com, **U.S. Trustee: United States Trustee (ND)** ustpregion16.nd.ecf@usdoj.gov

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) **August 2, 2022**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Ronald A. Clifford III, U.S. Bankruptcy Court, 1415 State St., Suite 233, Santa Barbara, CA 93101; U.S. Trustee 915 Wilshire Blvd., Suite 1850, Los Angeles, CA 90017; Debtor: Linda M. Ramirez, 2213 Miramar Walk, Oxnard, CA 93035

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **October 8, 2020**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 2, 2022      Sandy Cuevas  
Date                      Printed Name

/s/ Sandy Cuevas  
Signature

Linda M. Ramirez  
Ch. 13 Case No. 9:22-bk-10383-RC  
All Creditors (31):

County Assessor  
County Government Center, Room 100  
San Luis Obispo, CA 93408-0001

County Tax Collector  
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Santa Barbara, CA 93102-0357

Employment Development Dept.  
Bankruptcy Group MIC 92E  
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Franchise Tax Board  
Bankruptcy Section MS: A-340  
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**UNIFY FINANCIAL FEDERAL CREDIT  
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Minneapolis, MN 55416-3440

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Salt Lake City, UT 84111-2336

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Default Document Processing  
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